Supreme Court of the Hawaiian Islands--July Term. 1886.

KALUA (W) BY HER GUARDIAN AD LITEM VS. S. SELIG ADMINISTRATOR, ESTATE L. AHUNA DECEASED.

Opinion of Chief Justice JUDD.

This is a motion for a new trial; on the ground that the verdict of the jury was contrary to the law and the evidence.

I think this is one of those cases in which the Court is warranted in setting aside the verdict.

The verdict is, to my mind, so manifestly contrary to the evidence, as to induce the belief that the jury must have acted from bias, or under some mistake of fact, or law.

The whole effect of the plaintiff's own evidence, shows, to my mind, that she went to decedent's house, and understood the abominable bargain, that had been made for her body, between her mother and the decedent.

But if she did not at the moment so understand it, the jury were charged that, though she did not knowingly enter into this meretricious alliance, but went the very first night to Ahuna's bed, and continued to live thereafter, as his mistress, in his household, without objection, she thus ratified the compact; and if she continued to live in his household as his mistress, and was treated by Ahuna as such, and did no more about the household than a wife of a man in the same circumstances would have done, she could not recover for wages.

The evidence shows just this state of facts. It seems to me, that the jury must have done what the Court warned them not to do, to wit: awarded damages for the injury done to plaintiff's person, in the shape of wages for personal service. Without enlarging upon the evidence, I am of the opinion that a new trial should be granted, and so order.

Paul Neumann and W. A. Kinney for plaintiff; S. B. Dole for defendant.

Honolulu, July 31, 1886.

Supreme Court of the Hawaiian Islands--July Term, 1886. Jury Waived.

CHING ON AND MARY CHING ON VS. AMANA AND HOPAI YET.

Opinion of Chief Justice JUDD.

This is an action of ejectment, for the possession of two tracts of land, situated at Waimalu, Ewa, Oahu, embraced in Royal Patent No. 4472, to one Kamanaoulani, containing 42.65 acres.

To the complaint Hopai Yet pleaded the general issue. Amana was defaulted; but, by consent, default was taken off, and he answered during the trial, disclaiming as to the portion of the premises in possession of Hopai Yet; and as to the rest of the land he pleaded the general issue.

The point is made that the defendants having been sued jointly, judgment cannot be rendered against them separately, and so the judgment should be of non suit.

This is an interesting question of practice. It cannot well be decided without reference to the facts of the case. I find from the evidence that the Patentee of the land died about the year 1856, leaving two daughters, Napuahola and Nahauhau, as his sole heirs at law.

The younger, Nahauhau, died soon after this, unmarried and childless. Napuahola married one Joseph Manuel, and bore a number of children to him, but they all died but one, Mary, the plaintiff. Napuahola died in 1866, and her heir at law is the plaintiff, Mary.

It seems that on the 30th July, 1877, Joseph Manuel sold this land to Amana, defendant, and Asee and Apo. The interests of Asee and Apo, have, by successive conveyances become vested in the defendant, Hopai Yet.

The deed of Joseph Manuel conveyed nothing, except his curtesy, as father of the child, Mary, for the title was in Mary by inheritance from her mother, Napuahola. Lately the two defendants, Amana and Hopai Yet, have divided both pieces of land between themselves by deeds of partition. Whatever claim they have to the land is from the same source, the deed of Joseph Manuel. Under the authorities, I think the plaintiff can recover judgment against the defendants, severally for the portions of the estate held by them, although they were sued jointly.

In Jackson *ex dem*, Haines et al. vs. Woods et al., 5 Johns, 278, Chancellor Kent so held. He says: "To dismiss the plaintiff, and turn him round to a separate ejectment against each defendant, would be nothing but vexation to all parties; it would be applying to torts, the rule applicable only to contracts, that, if you declare for a joint possession, you must show one." In Fisher vs. Hepburn, 48 N. Y. 41, "it is held that when there are different claimants, each claiming distinct parcels of the real estate in question, but all denying plaintiff's rights on the same ground, and claiming title from the same source, it is proper to join them in the same action."

In Den vs. Snowhill, 13 N. J. 23, it was decided, "that, when two or more persons, holding distinct and separate possessions of the premises mentioned in the declaration, are united in the same declaration, and jointly enter into the consent rule and plead, judgment may be given against them separately; if their separate possessions are found by the jury."

In the case before me the defendants did not plead jointly, but I cannot see that this would make any difference according to our practice. Certainly a plaintiff in ejectment may recover to the extent he has proved. Nahinai vs. Lai, 3 Hawaiian R. I do not think the plaintiff is charged with notice of the deed of partition between the defendants, so far as to hazard his recovery of the land by suing the plaintiffs jointly. In Sedgwick and Wait, on trial of title to land, Sec. 239, the authors say: "At common law, in ejectment for lands, distinct parcels of which were in the several occupation of different persons, no direct objection to the misjoinder could be made, as by plea in abatement, but the parties might apply to the Court, to be allowed to enter into the consent rule, and plead separately. But even if they pleaded jointly, evidence might be given on the trial to show, that the defendants occupied distinct parcels, and in such cases, if the plaintiff was entitled to recover, there was verdict and judgment severerally for the parcels respectively occupied by the defendants."

The plaintiffs made a deed of the premises to certain Chinese children, reserving a life estate therein to themselves and the survivor.

This estate is sufficient upon which to recover in ejectment against defendants.

Plaintiff may have judgment against Amana for the portion of land in his possession, and against Hopai Yet for the portion in his possession, and costs, except $10 which must be paid by plaintiff, as the terms upon which an amendment was allowed.

Magoon and Kinney for plaintiffs; Brown and Avery for defendants.

Honolulu, July 31, 1886.

California Savings Banks.

In connection with our Savings Banks here, the last report of the bank commissioners on the San Francisco savings banks will be interesting. It shows a large gain in deposits. There are eight of these banks, and their total assets amount to $59,642,015, of which $1,708,652 is cash in hand, $33,796,563 is represented by loans on real estate, $14,063,749 is invested in stocks and bonds, and $6,266,345 is represented by loans on stocks, bonds and warrants. Over $20,000,000 out of the $33,796,563 invested in loans on real estate is held by two banks alone, leaving an average of a little more than $2,000,000 so invested by each of the other six banks, one of which holds such security only to the amount of 407,750. There is due to depositors $55,483,017, while other liabilities amount to $344,546. The reserve fund and profit and loss amount to $2,123,872, and the capital paid up is $1,690,580. There has been a large increase in gains in these savings banks, especially during the last six months, being over $3,000,000 for the year ending June 30, 1886, of which $2,187,000 was during the last six months, as against a gain of only $35,000 for the previous year ending June 30, 1885. Dividends paid for the first half of this year ranged from 3¼ to 4 per cent. on ordinary deposits, and from 4.20 to 5 per cent. on term deposits, the average of the whole being not quite 4 per cent. per annum. There were 74,515 open deposit accounts on January 1, 1886. In the interior of California there are fourteen savings banks, with resources amounting to $10,343,272, as against $9,236,865 last year. The loans on real estate amount to nearly $6,000,000, on personal security to $914,971, the stocks and bonds to $959,961, money on hand $604,592, and due from banks $681,553. The paid up capital exceeds $2,250,000, and there is due depositors nearly $7,340,00. The gain in resources during the past twelve months exceeded $1,000,000, and the deposits are larger than they were a year ago by almost the same amount. The total resources of the city and interior banks amount to $69,985,287, of which $59,642,015 belongs to the city. The aggregate increase in resources was $4,100,000, 75 per cent. being in the city, and the aggregate increase in loans on real estate was $2,800,000. There is a total increase of $2,879,000 in the amount due depositors, and of $652,000 in the money on hand.